

BEFORE THE INVESTIGATIVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING JUDGE
HOWARD C. BERMAN, JQC NO.
00-211

CASE NO. SC00-2491

**MOTION TO CLARIFY WHETHER JUDGES MAY PROVIDE “CHARACTER
WITNESS” AFFIDAVITS WITHOUT THE NECESSITY OF SUBPOENA OR
DEPOSITION**

Judge Howard C. Berman, by and through his undersigned counsel, moves for an order clarifying whether active judges may provide “character witness” affidavits without the necessity of a subpoena or deposition, and in support thereof, states as follows:

1. In the Order Scheduling Hearing and Pre-Hearing Conference, paragraph F7 provides that “**** the judge will be limited to a total of three live character witnesses. In addition to those witnesses, affidavits as to character may be filed by the Judge and will be considered by the Hearing Panel.”

2. Several judges contacted for the purpose of providing character affidavits have expressed concern with regard to whether providing such an affidavit violates the code of judicial conduct. Canon 2 of Judicial Conduct addresses the requirement that the “a judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.” In the commentary to Canon 2, the commentator states:

“A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when the judge

testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of judge require, a judge should discourage a party from requiring the judge to testify as a character witness.”

3. In a proceeding before the Judicial Qualifications Commission, it is probable and most likely that many of the persons best acquainted with the judge’s “character” are fellow judges. To require a subpoena and deposition from judges in order to provide character witness testimony seems an unnecessary expense. Further, it is not at all clear whether or not the Judicial Qualifications Commission would deem a deposition to be covered by the Order Scheduling Hearing and Pre-Hearing Conference, paragraph 7, as “affidavits as to character”.

4. Judge Berman seeks a ruling either that (1) active judges may provide “character witness” affidavits if willing to do so upon request by Judge Berman’s counsel without the necessity of a subpoena or deposition, or (2) a deposition is necessary to satisfy the provisions of the Code of Judicial Conduct but that depositions will be deemed “affidavits as to character” as set forth in paragraph 7 of the Order Scheduling Hearing and Pre-Hearing Conference.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the persons on the attached Service List this ____ day of July, 2001.

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